

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
AL HIRSCHFELD FOUNDATION,
:

Plaintiff,
:

-v-
:

THE MARGO FEIDEN GALLERIES LTD. and
MARGO FEIDEN,
:

Defendants.
:
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16 Civ. 4135 (PAE)

FINAL JUDGMENT
AND ORDER

PAUL A. ENGELMAYER, District Judge:

WHEREAS, by order dated June 10, 2016, this Court granted plaintiff Al Hirschfeld Foundation's ("AHF") order to show cause for a preliminary injunction against defendants The Margo Feiden Galleries, Ltd. ("MFG") and Margo Feiden ("Feiden"; and together with MFG, the "Feiden Parties"), as modified on March 8, 2017;

WHEREAS, by opinion and order dated November 1, 2017, this Court granted AHF's first motion for summary judgment, Dkt. 188, and on July 25, 2018, awarded AHF \$330,981.67 in damages, Dkt. 234;

WHEREAS, by opinion and order dated May 8, 2019, this Court granted AHF's second motion for summary judgment in part and awarded AHF \$11,100 in damages, Dkt. 282;

WHEREAS, by opinion and order dated November 22, 2019, this Court awarded AHF \$20,000 in damages, Dkt. 314; and

WHEREAS, by opinion and order dated February 7, 2020, this Court ordered the Feiden Parties to pay \$23,000 in monetary sanctions, Dkt. 344.

IT IS HEREBY ORDERED, ADJUDGED, DECLARED, AND DECREED THAT:

1. AHF validly terminated the prior settlement agreement between the parties dated September 29, 2000 (the “2000 Agreement”), *see* Dkt. 188 at 34;

2. By order dated July 25, 2018, the Feiden Parties are liable for AHF’s claims of conversion, and AHF is awarded \$288,600 in damages resulting therefrom, *see* Dkt. 234 at 30;

3. By order dated July 25, 2018, the Feiden Parties are liable for AHF’s claims relating to the sale of *giclee* prints beyond the scope of the license afforded by the 2000 Agreement, and AHF is awarded \$42,381.67 in damages resulting therefrom, *see id.*;

4. By order dated May 8, 2019, the Feiden Parties are liable for AHF’s claims of breach of contract for sales in violation of the 2000 Agreement, and AHF is awarded a total of \$11,100 in damages resulting therefrom, *see* Dkt. 282 at 39;

5. By order dated November 22, 2019, the Feiden Parties are liable for AHF’s claims of conversion, and AHF is awarded a total of \$20,000 in damages resulting therefrom, *see* Dkt 314 at 13;

6. AHF is awarded a total of \$362,081.67 in aforementioned damages for which MFG and Feiden shall be jointly and severally liable;

7. Pursuant to Articles 5001, 5002, and 5004 of the New York Civil Practice Law & Rules, AHF shall be awarded pre-judgment interest for the damages of \$308,600 related to the conversion claims, to be measured as of December 14, 2017—the date of conversion, *see* Dkt. 234 at 5—through the date of this judgment, at a rate of nine percent per annum, in the amount of \$62,700.76;

8. Pursuant to Articles 5001, 5002, and 5004 of the New York Civil Practice Law & Rules, AHF shall be awarded pre-judgment interest for the damages of \$53,481.67 related to the violations of the 2000 Agreement, to be measured from September 6, 2016—the date that the

2000 Agreement terminated pursuant to the termination notice that AHF had served, *see* Dkt. 188 at 9—through the date of this judgment, in the amount of \$16,985.19;

9. Pursuant to the Court’s order on civil contempt, Dkt. 344, as later settled by the parties in a settlement agreement (the “2020 Agreement”) submitted herewith, the Feiden Parties shall pay AHF \$12,000 in monetary sanctions, in contemplation of AHF and the Feiden Parties’ 2020 Agreement;

10. The total amount for which the Feiden Parties are hereby adjudged to be jointly and severally liable is \$453,767.62.

11. Pursuant to 28 U.S.C. § 1961, AHF shall be entitled to post-judgment interest at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.

12. The Feiden Parties, including their owners, members, shareholders, partners, officers, directors, agents, servants, employees, independent contractors, representatives, licensees, subsidiaries, manufacturers, distributors, clients, predecessors, successors, heirs, and assigns, joint and severally, shall also be permanently enjoined from:

- a. manufacturing, reproducing, selling, offering for sale, licensing, offering for license, promoting, advertising, distributing, donating, consigning, lending and/or commercially exploiting in any manner, either directly or indirectly, any *giclée* or other photostatic reproductions of original Hirschfeld works for sale, *see* Dkt. 188 at 19–25; for avoidance of doubt, this restriction does not enjoin the Feiden Parties’ ability to make

reproductions, for advertising or marketing purposes, of Hirschfeld works to which they still maintain rights, *see id.* at 19;

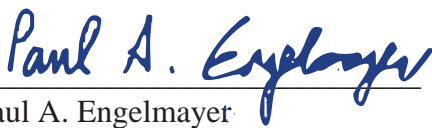
- b. holding themselves out as authorized distributors of *giclees* of any of Hirschfeld's works, or holding themselves out as exclusive authorized distributors of reproductions of Hirschfeld's works; and
- c. exercising any rights previously granted pursuant to the 2000 Agreement, except with respect to the Feiden Parties' use of Hirschfeld's name and likeness (including in advertisements and promotion) in connection with the sale of original Hirschfeld works and derivative works lawfully owned by the Feiden Parties or consigned to the Feiden Parties by third parties, if any, in accordance with the Court's May 8, 2019 declaratory judgment, *see* Dkt. 282 at 28–29.

12. Violation of this Judgment and Order shall expose the Feiden Parties to all applicable penalties including contempt of Court; and

13. The Court shall maintain jurisdiction over this action for the purposes of enforcing this Judgment.

CONCLUSION

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: March 17, 2020
New York, New York